Sarawak Shell Bhd v PPES Oil & Gas Sdn Bhd & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO Q-02-501 OF 1996
MAHADEV SHANKAR, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA
13 NOVEMBER 1997

Arbitration *— Agreement — Jurisdiction of court — Allegation of fraud — Whether court could exercise powers under s 25(2) of the Arbitration Act 1952 — Whether s 34(1) of the Arbitration Act 1952 deprived the court of its jurisdiction under s 25(2) — Whether court can be compelled to refuse arbitration merely because one party alleges that the dispute involves a question of fraud — Arbitration Act 1952 ss 25(2) & 34(1)*

The appellant and the respondent entered into a contract. The parties contracted to have all their disputes connected with the contract conducted not by a court but by arbitrators in accordance with the United Nations Commission on International Trade Law Arbitration Rules 1976 and the Rules of the Regional Centre for Arbitration at Kuala Lumpur ('the Rules'). A dispute arose and the respondents commenced arbitration proceedings by serving written notice and their points of claim on the appellant. The appellant, on the other hand, asserted that the respondents had accused it of fraud. They argued that since this was the case, the trial judge was obliged to exercise his powers under s 25(2) of the Arbitration Act 1952 ('the Act'). The appellant filed their originating summons in the High Court invoking the court to make the orders the appellant required under s 25(2) of the Act. The appellant contended that s 34(1) of the Act did not deprive the High Court of its power to make orders under s 25(2) of the Act. The trial judge rejected the appellant's application and held that s 34(1) of the Act made any reference to s 25(2) of the Act impermissible (see [1997] 4 MLJ 280). The appellant appealed.

Held, dismissing the appeal:

Taking the plain meaning of the words in s 34(1) of the Act, the effect of this section was to exclude altogether not just s 25(2) but the entire Act and all other written law from arbitrations held under the Rules. Further, as to the word 'held', all that needs to be asked is whether there is an arbitration in existence. This was satisfied as soon as the notice of arbitration was received by the appellant.

In the absence of s 34(1) of the Act, it would not be correct to say that the courts can be compelled to refuse arbitration merely because one party alleges that the dispute involves a question of fraud. There is a power under s 25(2) of the Act but the court will not exercise that power merely because one party makes a bare allegation of fraud. Even if s 34(1) of the Act did not aid the

respondents, this application would still be misconceived because there was nothing in the respondents' letters which amounted to a concrete or specific charge of fraud such as to come within the purview of s 25(2) of the Act (see pp 28C–D, H–I and 29B, D).

[Bahasa Malaysia summary

Perayu dan penentang telah mengikat kontrak. Pihak-pihak mengikat kontrak supaya semua pertikaian yang berkaitan dengan kontrak diuruskan bukan oleh sebuah mahkamah tetapi oleh penimbangtara menurut Suruhanjaya Persatuan Bangsa-Bangsa Bersatu atas Kaedah-Kaedah Timbangtara Undang-Undang Antarabangsa 1976 dan Kaedah-Kaedah Pusat Serantau Timbangtara Kuala Lumpur ('Kaedah tersebut'). Suatu pertikaian telah timbul dan penentang memulakan prosiding timbangtara dengan menyampaikan notis bertulis dan hujah tuntutan mereka pada perayu. Sebaliknya, perayu menegaskan bahawa penentang telah menuduh ia bersalah atas fraud. Mereka menghujahkan bahawa memandangkan keadaan begitu, hakim perbicaraan wajib melaksanakan kuasanya di bawah s 25(2) Akta Timbangtara 1952 ('Akta tersebut'). Perayu memfailkan saman pemula di Mahkamah Tinggi dan memohon supaya mahkamah membuat perintah yang dikehendaki oleh perayu di bawah s 25(2) Akta tersebut. Perayu menghujahkan bahawa s 34(1) Akta tersebut tidak melucutkan kuasa daripada Mahkamah Tinggi untuk membuat perintah di bawah s 25(2) Akta tersebut. Hakim perbicaraan menolak permohonan perayu dan memutuskan bahawa s 34(1) Akta tersebut tidak membenarkan sebarang rujukan kepada s 25(2) Akta tersebut (lihat [1997] 4 MLJ 280). Perayu membuat rayuan.

Diputuskan, menolak rayuan:

Dengan mengambil makna biasa perkataan-perkataan dalam s 34(1) Akta tersebut, kesan seksyen ini adalah untuk mengecualikan secara keseluruhan bukan sahaja s 25(2) tetapi keseluruhan Akta dan segala undang-undang bertulis lain daripada timbangtara yang dikendalikan di bawah Kaedah tersebut. Seterusnya, mengenai perkataan 'diadakan', apa yang perlu ditanya ialah sama ada timbangtara wujud. Ini dipenuhi sebaik sahaja notis timbangtara diterima oleh perayu.

Dalam ketiadaan s 34(1) Akta tersebut, adalah tidak betul untuk mengatakan bahawa mahkamah boleh dipaksa menolak timbangtara semata-mata kerana suatu pihak mengatakan bahawa pertikaian melibatkan persoalan fraud. Terdapat kuasa di bawah s 25(2) Akta tersebut tetapi mahkamah tidak akan melaksanakan kuasa itu semata-mata kerana suatu pihak membuat pengataan tentang fraud. Sekalipun s 34(1) Akta tersebut tidak membantu penentang, permohonan ini masih salah tanggap kerana tiada apa-apa dalam surat penentang yang sama seperti pertuduhan fraud yang kukuh atau spesifik hinggakan dirangkumi oleh skop s 25(2) Akta tersebut (lihat ms 28C–D, H–I dan 29B, D).]

Notes

For cases on jurisdiction of court, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 710–712.

Cases referred to

Bremer Vulkan v South India Shipping Corp [1981] 1 All ER 289 (refd)
Camilla Cotton Oil Co v Granadex SA [1976] 2 Lloyd's Rep 10 (refd)
Hong Leong Equipment Sdn Bhd v Liew Fook Chuan [1996] 1 MLJ 481 (refd)
Klockner Industries-Anlagen GmbH v Kien Tat Sdn Bhd & Anor [1990] 3 MLJ 183 (refd)
Lai Siew Wah Sdn Bhd v Ng Chin [1988] 1 MLJ 393 (refd)
Malaysia Government Officers' Co-operative Housing Society Ltd v United Asia Investment Ltd & Ors [1972] 1 MLJ 113 (refd)
Soilchem Sdn Bhd v Standard-Elektrik Lorenz AG [1993] 3 MLJ 68 (refd)
Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317 (refd)
Watson v Prager & Anor [1991] 3 All ER 487 at p 510 (refd)

Legislation referred to

Arbitration Act 1952 ss 25(2), 34(1), (2)
Regional Centre for Arbitration Rules arts 3 r 2, 7
United Nations Commission on International Trade Law Arbitration Rules 1976
Arbitration Act 1979 ss 3(1), 24(2) [UK]

Appeal from: Originating Summons No MR(24)–25 of 1996 (High Court, Miri)

Cecil Abraham, Robert Lazar and *Jimmy Wee* (*Jimmy HT Wee & Co*) for the appellant.
MS Sandhu and *Victor Wong* (*Victor Wong & Chew*) for the respondents.

Cur Adv Vult

Mahadev Shankar JCA (delivering the judgment of the court): Our decision to dismiss this appeal was unanimous. Its subject matter is of some importance to the independence and inviolability of arbitrations conducted in the Regional Centre for Arbitration at Kuala Lumpur ('the Centre') under the United Nations Commission on International Trade Law Arbitration Rules 1976 and the Rules of the Centre ('the Rules').

In the court below, Sarawak Shell Bhd ('Shell') sought to stymie the arbitration proceedings commenced by the respondents by contending quite simply that s 34(1) of the Arbitration Act 1952 ('the Act') did not deprive the High Court of its power to make orders under s 25(2) of the

A Act. Shell asserted that since the respondents had accused it of fraud, the trial judge was obliged to exercise his powers aforesaid. In rejecting this claim, the trial judge held that s 34(1) of the Act made any reference to s 25(2) of the Act impermissible (see [1997] 4 MLJ 280).

Before us, Mr Cecil Abraham of counsel for Shell sought to dilute
B the effect of s 34(1) of the Act by submitting that it could only apply to 'any arbitration *held*' under the Rules. In the present case, he asserted that the arbitration had not quite got off the ground and could not therefore be regarded as an arbitration 'held' under the Rules.

This point was not presented in that fashion in the court below.
C Nevertheless, we permitted Mr Abraham to proceed because we did not feel that the respondents would be in any way prejudiced and that the wider interests of the administration of justice made it desirable that we deal with this purported 'refinement' of s 34(1) of the Act once and for all.

The relevant contract was a very complex one which all parties had entered into at arm's length. Clause 28(6) is set out here with the
D necessary emphasis:

> The COMPANY and the CONTRACTOR hereby agree that *any dispute* which may arise in connection with the activities contemplated in the CONTRACT on the application, *implementation*, validity, *breach* or termination of the CONTRACT or any provision thereof (whether resulting
E from a claim in contract, *tort* or *otherwise*) shall be finally and *exclusively* settled in accordance with the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules as applied by the Regional Centre of Arbitration at Kuala Lumpur, Malaysia. The place of arbitration shall be the Regional Centre for Commercial Arbitration, Kuala Lumpur. The number of arbiters shall be three (3) and the third arbitrator shall
F always be a suitably qualified and experienced lawyer. (Emphasis added.)

The parties contracted to have *all* their disputes connected with the contract conducted not by a court but by arbitrators in accordance with the Rules.

The first shot was fired by the respondents by their letter to Shell
G dated 15 March 1996. Its subject matter was a valuation of the contract. The last paragraph reads:

> The ratio of preliminaries to that of measured works and additions is 31.7%, this is compared to 51.35% in our tender. The valuation without claims is RM308,188,408 therefore claims represents 11% of the contract
H value. Given the circumstances under which we fulfilled our obligations under the contract, the valuation being requested is fair and reasonable. You will note that we have excluded damages resulting from the company's conspiracy with our subcontractors, the loss of other contracts through the damage to our credibility and the detrimental relationship with our subcontractors due to delayed payment. We reserve our right to seek damages
I in the event that we are unable to reach an equitable and timely agreement on the attached valuation.

Shell denied the allegations of conspiracy by its letter dated 30 April 1996 claiming the remarks were defamatory and insisted they be withdrawn.

The respondents persisted by their letter dated 14 May 1996. The material portion reads: A

> As the subject matter is in the points of claim in both the arbitration between PEF JV and SSB also between McConnell Dowell and PEF JV it would appear that one party or the other is in jeopardy of committing perjury. If the company insists on standing by their letter SSB/PEF/3105 we will pursue this point in the arbitration. We advise the company with all due respect to take the attached documents to their legal adviser prior to making any further statements on this matter. From the evidence in our hands it is quite clear that the company's engineering manager Mr FAC Gray, did call a meeting with our subcontractor in late January 1995. That they did advise our subcontractor that they were going to issue a notice of termination on the joint venture. Also that they conspired with our subcontractor to take over the works awarded to the joint venture. It is also apparent that the company was intimating that they would consider rewarding the subcontractor for their cooperation in this conspiracy. B C
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> We put it to the company to deny the evidence we have presented or to unconditionally withdraw their letter SSB/PEF/3105. D

On 24 May 1996, the respondents served a written notice together with their points of claim on Shell. What they did was in accordance with the Rules.

Article 3 r 2 states: E

> Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

In accordance with art 7, the respondents appointed Mr WSW Davidson as their arbitrator on 27 May 1996. The Director of the Centre ('the director') was notified the same on the same day. The centre requested the initial payment on 5 June 1996 and the respondents paid this on 12 June 1996. On 25 June 1996, the director wrote to Shell that the appointment of their arbitrator was due. F

On 26 June 1996, Shell's solicitors filed their originating summons in the High Court at Kuching invoking the court to make the orders Shell required under s 25(2) of the Act. G

By that stage, there was no question that the arbitration had commenced. Indeed, Mr Abraham conceded this. What he wished us to imply was that it is only upon *conclusion* of the arbitration that s 34(1) would become operative so as to make the rest of the Act inapplicable (except of course the enforcement provisions in s 34(2) of the Act). H

Far from diluting its effect, this argument seeks to negate the section altogether. The clear words are:

> Notwithstanding anything to the contrary in this Act or in any other written law ... the provisions of this Act or other written law shall not apply to any arbitration held I

Thus the entire Act (except the enforcement provisions in s 34(2)) has been excluded as well as all other statutory provisions. Such a construction is consistent with reality of the situation because the Rules constitute a

comprehensive framework for the resolution of all disputes within their ambit.

We need to say something about *Klockner Industries-Anlagen GmbH v Kien Tat Sdn Bhd & Anor* [1990] 3 MLJ 183 ('*Klockner*') and *Soilchem Sdn Bhd v Standard-Elektrik Lorenz AG* [1993] 3 MLJ 68 ('*Soilchem*'). Initially, Shell relied solely on s 25(2) of the Act. Subsequently, the originating summons was amended to claim that the court also had jurisdiction at common law or an inherent jurisdiction to make the orders sought. In *Klockner*, Zakaria Yatim J (as he then was) held that s 34 of the Act precluded the High Court from exercising its supervisory jurisdiction over arbitration proceedings at the centre. He said (at p 185):

> It is clear that under the section, the court cannot exercise its supervisory function as provided in the Arbitration Act 1952, in respect of such arbitration. Neither can the court exercise its supervisory function over such arbitration under any other written law. The words 'written law' have been defined in s 3 of the Interpretation Act 1967, to mean the Federal Constitution and State Constitutions, Acts of Parliament and subsidiary legislation made thereunder; ordinances and enactments and subsidiary legislation made thereunder; and any other legislative enactments or legislative instruments. 'Written law', therefore, includes the Companies Act 1965.

In *Klockner*, the intervention of the court was sought in an ongoing arbitration. In *Soilchem*, the award had been made. The applicant came to the High Court for certiorari. Abu Mansor J (as he then was) said at p 72:

> In substance, Mr Pathmanathan submitted that s 34(1) of the Arbitration Act 1952 does not oust the jurisdiction of the court to quash the decision of the arbitrator.
>
> After considering the submissions of both counsel, I am clear that the policy of the Arbitration Act 1952 was obviously to exclude cases that are before the Regional Centre for Arbitration at Kuala Lumpur. I have no doubt as to the purport and meaning of s 34(1) of the Act. It was meant to exclude the jurisdiction of this court in such cases. I am clear on this and I apply the decision of Zakaria Yatim J in *Klockner Industries* and I made the order in terms of prayer (1) with costs as prayed.

For the avoidance of doubt, we now categorically say that these two decisions should not be understood to have left open the possibility that the court had some other power to intermeddle in the arbitrations at the centre whether by way of inherent jurisdiction or at common law or otherwise.

We think it useful to reproduce here what Lord Diplock said in *Bremer Vulkan v South India Shipping Corp* [1981] 1 All ER 289 at pp 295–296:

> The supervisory jurisdiction that the High Court exercises over the way in which inferior courts and tribunals conduct their proceedings on which Lord Denning MR and Cumming-Bruce LJ relied as one source of its jurisdiction *to prohibit further proceedings in an arbitration is not inherent in its character as court of justice; it is statutory*. True it is that, in typical English fashion, the supervisory jurisdiction over inferior tribunals that is vested in the High Court by statute is that which was vested in or capable of being exercised by the

superior courts of common law, principally the Court of Queen's Bench, before the Supreme Court of Judicature Act 1873; so one must look to see over what inferior courts or tribunals the Court of Queen's Bench did assert a supervisory jurisdiction. The procedure by which it exercised this jurisdiction until the very recent change in the Rules of the Supreme Court was by the issue of the prerogative writs (certiorari, prohibition, mandamus, etc) or the making of orders of the like nature, although there existed too at common law the confessedly anomalous jurisdiction to set aside an award of private arbitrators for errors of law on its face: *Kent v Elstob* (1802) 3 Ea 18, and see *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 KB 338, per Denning LJ at p 351. *This jurisdiction, however, was not directed to controlling the procedure followed in the arbitration but was concerned only with the written award resulting from it.* So one must start by inquiring whether during the centuries-long history of English arbitration, there are any instances of the Court of Queen's Bench before 1873 or the High Court thereafter asserting a jurisdiction to control the conduct of a consensual private arbitration by the issue of prerogative writs or orders.

My Lords, in *R v National Joint Council for the Craft of Dental Technicians* [1953] 1 QB 704, it was stated by Lord Goddard CJ, whose knowledge of the history of the common law was profound, that there were no such instances; and none has been drawn to the attention of this House. In that case, it was held by the Divisional Court (at p 708) *that the general supervisory jurisdiction of the High Court over the proceedings of inferior courts and tribunals extended only to*:

> '*... bodies on whom Parliament conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction.*'

These bodies would include arbitrators appointed to conduct a statutory arbitration to whose jurisdiction parties to a particular kind of dispute are compelled to refer it for determination, but they *do not include arbitrators appointed pursuant to private arbitration agreements.* In relation to private arbitrations, the jurisdiction of the High Court to supervise the conduct of the arbitration is confined to exercising the powers conferred on it by the Arbitration Acts 1950 and 1979 (though the latter Act does not apply to the arbitration in the instant case). The reason for this distinction is that the jurisdiction of an inferior court or statutory tribunal or arbitrator over the person who wishes to resist the claim is compulsory whereas *the jurisdiction of an arbitrator over both parties to a private arbitration agreement is consensual only.* As Lord Goddard CJ, in the case that I have cited, said of such an arbitrator:

> '... In one sense he is the antithesis of a court. A person goes to arbitration because he does not want to go to the court. Therefore, he sets up his own private judge to decide the case, but the arbitrator is not deciding it as a judge, he is deciding it as an arbitrator, and procedural rights and all matters relating to procedure are to be found in the Arbitration Act 1950.' [Now the Arbitration Acts 1950 and 1979.]

I find myself unable to accept as well-founded the general proposition by Lord Denning MR that:

> '... the High Court has an inherent jurisdiction to supervise the conduct of arbitrators. It is not confined to statutory powers.'

A That such a general supervisory power was vested in the High Court had never been asserted until the judgment of the Court of Appeal delivered in June 1979 in the *Angelic Grace* [1980] 1 Lloyd's Rep 288, where, although in the result it was not acted upon, the claim that it exists is to be found in the judgment of Lord Denning MR himself. It does not appear that *R v National Joint Council for the Craft of Dental Technicians* had been cited to the B court in the *Angelic Grace* and the authorities relied on for the proposition were statements made obiter by Lord Denning MR's predecessor, Sir George Jessel MR, in two judgments at first instance delivered shortly after the passing of the Supreme Court of Judicature Act 1873 and before the passing of the Arbitration Act 1889. These were *Malmesbury Railway Co v Budd* (1876) 2 Ch D 113 and *Beddow v Beddow* (1878) 9 Ch D 89. Both C were about the jurisdiction of the newly-created High Court to grant an injunction to restrain an arbitrator, who was disqualified by bias, from proceeding with the arbitration. I shall revert to these two cases when I come, as I shall do shortly, to consider the extent to which the statutory jurisdiction under s 45 of the Supreme Court of Judicature (Consolidation) Act 1925 to grant injunctions empowers the court to intervene by injunction D in the conduct of arbitrations. For the moment, I confine myself to rejecting the notion that the High Court has a general supervisory power over the conduct of arbitrations more extensive than those that are conferred on it by the Arbitration Acts; nor do I suppose that the assertion of such an open-ended power of intervention in the conduct of consensual private arbitration would be likely to encourage resort to London arbitration under contracts E between foreigners which have no other connection with this country than the arbitration clause itself. (Emphasis added.)

In the same case, there is a reference to what an exclusion provision could achieve in the dissenting judgment of Lord Scarman where he said (at p 309):

F Though the jurisdiction of the courts may now be ousted in those international arbitrations where the new Act allows an exclusion agreement, it remains a vital, if no longer universal, principle of the law that the courts will act to prevent injustice arising in arbitration proceedings where it is necessary so to do.

G I therefore agree with my noble and learned friend, Lord Fraser and with Lord Denning MR that the courts retain such a power save where excluded by statute and that parties to arbitration have a right to a fair arbitration. If the right can be protected within the arbitral process, as in most cases under the 1979 Act it will be, the courts will not intervene, for neither justice nor convenience will require so drastic a step. *If the right be excluded by statute, as well it may be under an exclusion agreement rendered* H *lawful by the new Act, there will no legal right for the court to protect.* (Emphasis added.)

The exclusion agreement Lord Scarman was referring to must have been s 3(1) of the English Arbitration Act 1979 which reads:

I In any case where —

(a) an arbitration agreement, other than a domestic arbitration agreement, provided for disputes between the parties to be referred to arbitration; and

(b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud; and A

(c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute;

then, except in so far as the exclusion agreement otherwise provides, the High Court shall not exercise its powers under s 24(2) of the principal Act (to take steps necessary to enable the question to be determined by the High Court) in relation to that dispute. B

Section 25(2) of our Act is identical to s 24(2) of the English Arbitration Act 1950. Our attention has not been directed to any equivalent legislation to our s 34(1) in the United Kingdom or elsewhere. Taking the plain meaning of the words, we are in complete agreement with the trial judge C that the effect of this section was to exclude altogether not just s 25(2) but the entire Act and all other written law from arbitrations held under the Rules. We hold further that in the context of the section, and as to the word 'held', all we need to ask is whether there is an arbitration in existence. This would be the case as soon as the notice of arbitration is D received by the party against whom the arbitration is initiated. In the result, it seems fair to say that s 34(1) of the Act is of wider application than s 3(1) of the English Arbitration Act 1979 [see 2 *Halsbury's Laws of England* (4th Ed) para 707].

With respect to Mr Abraham, we derived no assistance from passages E he cited to us from *Malaysia Government Officers' Co-operative Housing Society Ltd v United Asia Investment Ltd & Ors* [1972] 1 MLJ 113 and *Lai Siew Wah Sdn Bhd v Ng Chin* [1988] 1 MLJ 393 because these cases fell to be decided without recourse to an exclusive jurisdiction section like s 34(1) of the Act.

The claim that the court had powers to intercede here by virtue of its F inherent jurisdiction or at common law was based on dicta cited from *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 and *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481. These decisions were irrelevant to our present purposes because they concerned the power of judicial review over the decision of G the Industrial Court in the first case, and the Minister's decision pursuant to the exercise of his statutory powers in the second. In each case, the jurisdiction of the Industrial Court and the Minister over the employer was (to borrow the words of Lord Diplock) 'compulsory whereas the jurisdiction of an arbitrator over both parties to an arbitration agreement is consensual only'. H

In the absence of s 34(1) of the Act, we think it would not be correct to say that the courts can be compelled to refuse arbitration merely because one party alleges that the dispute involves a question of fraud. We have taken note of the passage in *The Law and Practice of Commercial Arbitration* (2nd Ed) by Mustill and Boyd at p 116 which reads: I

> An issue of fraud is capable in principle of falling within the scope of an agreement to arbitrate; whether or not it does so depends on the wording of the agreement.

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> The court has, however, a jurisdiction to order that the arbitration agreement shall cease to have effect, and may also give leave to revoke the authority of the arbitrator, so far as may be necessary to enable an issue of fraud to be determined in the High Court.

Admittedly, there is a power under s 25(2) but the court will not exercise
B that power merely because one party makes a bare allegation of fraud. The authorities have all been discussed by Mustill and Boyd at p 501:

> 'Fraud' is a technical term with a precise legal meaning: namely the knowing or reckless making of a misstatement. It is far from embracing all forms of personal misconduct.

C The cases on point are *Camilla Cotton Oil Co v Granadex SA* [1976] 2 Lloyd's Rep 10 at p 16, and *Watson v Prager & Anor* [1991] 3 All ER 487 at p 510.

Had there been no s 34(1) of the Act to come to the aid of the respondents ,we would still have held that this application was misconceived
D because there was nothing in the respondents' letters we have quoted, or in paras 65 and 66 which amounts to any concrete or specific charge of fraud such as to come within the purview of s 25(2) of the Act.

In the result, we dismissed this appeal without calling upon the respondents to reply because at the close of the appellants' counsel's submission, we had no doubts whatsoever that the judgment of the court
E below should not be disturbed, and awarded the respondents their costs.

Appeal dismissed.

Reported by David Lai

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